

of this section, to be defined by NIOSH on the basis of further research and analyses, using the procedures under § 83.13.

(b) NIOSH will determine the health endangerment criteria for adding the class under paragraph (a)(1) of this section to the Cohort, using the procedures under § 83.13. NIOSH will report to the Board and to petitioner(s) the results of this determination, together with its finding under 42 CFR part 82 that there was insufficient information to complete the dose reconstruction. HHS will consider this finding under 42 CFR part 82 sufficient, without further consideration, to determine that it is not feasible to estimate the levels of radiation doses of individual members of the class with sufficient accuracy.

(c) NIOSH will evaluate the petition as it may concern a class of co-workers, as described under paragraph (a)(2) of this section, according to the procedures under § 83.13.

§ 83.15 How will the Board consider and advise the Secretary on a petition?

(a) NIOSH will publish a notice in the *FEDERAL REGISTER* providing notice of a Board meeting at which a petition will be considered, and summarizing the petition to be considered by the Board at the meeting and the findings of NIOSH from evaluating the petition.

(b) The Board will consider the petition and the NIOSH evaluation report at the meeting, to which the petitioner(s) will be invited to present views and information on the petition and the NIOSH evaluation findings. In considering the petition, both NIOSH and the members of the Board will take all steps necessary to prevent the disclosure of information of a personal nature, concerning the petitioners or others, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(c) In considering the petition, the Board may obtain and consider additional information not addressed in the petition or the initial NIOSH evaluation report.

(d) NIOSH may decide to further evaluate a petition, upon the request of the Board. If NIOSH conducts further

evaluation, it will report new findings to the Board and the petitioner(s).

(e) Upon the completion of NIOSH evaluations and deliberations of the Board concerning a petition, the Board will develop and transmit to the Secretary a report containing its recommendations. The Board's report will include the following:

(1) The identification and inclusion of the relevant petition(s);

(2) The definition of the class of employees covered by the recommendation;

(3) A recommendation as to whether or not the Secretary should designate the class as an addition to the Cohort;

(4) The relevant criteria under § 83.13(c) and findings and information upon which the recommendation is based, including NIOSH evaluation reports, information provided by the petitioners, any other information considered by the Board, and the deliberations of the Board.

§ 83.16 How will the Secretary decide the outcome(s) of a petition?

(a) The Director of NIOSH will propose, and transmit to all affected petitioners, a decision to add or deny adding classes of employees to the Cohort, including an iteration of the relevant criteria, as specified under § 83.13(c), and a summary of the information and findings on which the proposed decision is based. This proposed decision will take into consideration the evaluations of NIOSH and the report and recommendations of the Board, and may also take into consideration information presented or submitted to the Board and the deliberations of the Board. In the case of a petition that NIOSH has determined encompasses more than one class of employees, the Director of NIOSH will issue a separate proposed decision for each separate class of employees.

(b) HHS will only allow the petitioner(s) to contest a proposed decision to deny adding a class to the Cohort or to contest a health endangerment determination under § 83.13(c)(3)(ii). Such challenges must be submitted in writing within 30 calendar days and must include evidence that the proposed decision relies on a record of either substantial factual errors or substantial

errors in the implementation of the procedures of this part. Challenges may not introduce new information or documentation concerning the petition or the NIOSH or Board evaluation(s) that was not submitted or presented by the petitioner(s) or others to NIOSH or to the Board prior to the Board's issuing its recommendations under § 83.15.

(c) A panel of three HHS personnel, independent of NIOSH and appointed by the Secretary, will conduct an administrative review based on a challenge submitted under paragraph (b) of this section and provide recommendations of the panel to the Secretary concerning its merits and the resolution of issues contested by the challenge. Reviews by the panel will consider, in addition to the views and information submitted by the petitioner(s) in the challenge, the proposed decision, the NIOSH evaluation report(s), and the report containing the recommendations of the Board issued prior to the proposed decision under § 83.15. The reviews may also consider information presented or submitted to the Board and the deliberations of the Board prior to the issuance of the recommendations of the Board under § 83.15. The panel shall consider whether HHS substantially complied with the procedures of this part, the factual accuracy of the information supporting the proposed decision, and the principal findings and recommendations of NIOSH and those of the Board issued under § 83.15.

(d) The Secretary will make the final decision to add or deny adding a class to the Cohort, including the definition of the class, after considering information and recommendations provided to the Secretary by NIOSH, the Board, and from an HHS administrative review when such a review is conducted under paragraph (c) of this section. HHS will transmit a report of the decision to the petitioner(s), including an iteration of the relevant criteria, as specified under § 83.13(c), and a summary of the information and findings on which the decision is based. HHS will also publish a notice summarizing the decision in the FEDERAL REGISTER.

§ 83.17 How will the Secretary report a final decision to add a class of employees to the Cohort and any action of Congress concerning the effect of the final decision?

(a) If the Secretary designates a class of employees to be added to the Cohort, the Secretary will transmit to Congress a report providing the designation, the definition of the class of employees covered by the designation, and the criteria and findings upon which the designation was based.⁴

(b) A designation of the Secretary will take effect 180 calendar days after the date on which the report of the Secretary is submitted to Congress, unless Congress takes an action that reverses or expedites the designation.

(c) After either the expiration of the congressional review period or notification of final congressional action, whichever comes first, the Secretary will transmit to DOL and to the petitioner(s) a report providing the definition of the class and one of the following outcomes:

(1) The addition of the class to the Cohort; or

(2) The result of any action by Congress to reverse or expedite the decision of the Secretary to add the class to the Cohort.

(d) The report specified under paragraph (c) of this section will be published on the Internet at www.cdc.gov/niosh/ocas and in the FEDERAL REGISTER.

§ 83.18 How can the Secretary cancel or modify a final decision to add a class of employees to the Cohort?

(a) The Secretary can cancel a final decision to add a class to the Cohort, or can modify a final decision to reduce the scope of a class added by the Secretary, if HHS obtains records relevant to radiation exposures of members of the class that enable NIOSH to estimate the radiation doses incurred by individual members of the class through dose reconstructions conducted under the requirements of 42 CFR part 82.

(b) Before canceling a final decision to add a class or modifying a final decision to reduce the scope of a class, the

⁴ See 42 U.S.C. 7384l(14)(C)(ii).